IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3570 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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REGIONAL PROBATION & AFTER CARE ASSOCIATION & 20 - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR PARESH M DAVE for Petitioner(s) : 1 - 21.
MS.ARCHANA RAVAL, ASSTT. GOVERNMENT PLEADER for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 14/06/2006

ORAL JUDGMENT

The present petition is filed by the Regional Probation and After Care Association, a public trust registered and incorporated under the provisions of

the Bombay Public Trusts Act, through its Chairman, Yakubhai M. Bhana along with the employees of the petitioner-trust.

The petitioner trust maintains and runs two observation homes for the purpose of care and protection of children. Both these observation homes are recognised by the Government of Gujarat, through its Social Welfare Department. The petitioner-trust has approached this Court for the relief in the nature of a direction to the respondents to give grant-in-aid to the petitioner-trust for giving benefits like Medical Allowance, Leave Travel Concession, Uniform, Washing Allowance, Leave Encashment, Festival and Food Allowance and all other allowances as granted to the employees of observation homes/ remand homes run by the Government. The trust has also prayed for grant of other benefits, such as, bonus, pension, gratuity and other similar benefits as granted to the employees of observation homes/ remand homes run by the Government.

2. It is the case of the petitioner-trust that there are about eight such observation homes run by public charitable trusts while there are 16 observation homes which are run by the Government. The services rendered by observation homes run by public charitable trusts are similar and identical in nature to that of the services rendered by observation homes run by the Government. It is also

the case of the petitioner-trust that the duties discharged by the employees of the observation homes/ remand homes run by the public charitable trusts and the duties discharged by the employees of the observation homes/ remand homes run by the Government are the same and there is no distinguishing factor on account of which the employees of the observation homes run by the public charitable trust can be denied any benefit which is given to the employees of the observation homes run by the Government.

3. Mr.Dave, the learned advocate appearing for the petitioners invited attention of this Court to the order passed by this Court (Coram: A.M. Kapadia, J.) on 23rd February 2001. This Court has placed on record the factual aspects of the matter in para 3, and thereafter in para 4 the Court has considered the submissions of the learned advocate for the petitioners, particularly, the decision on which the learned advocate relied upon for grant of relief, in the matter of **State of Maharashtra Vs. Manubhai Pragaji Vashi,** reported in A.I.R. 1996 SC 1.

The learned advocate Mr.Dave relied upon the observations made by this Court in para 5 of the said judgement. The same is reproduced hereunder for ready perusal:

> “It may be noted that this petition came to be filed in the year 1993 and the judgement relied upon by Mr.Dave is of 1996.

> Therefore, it would be more appropriate if the Government considers the petition as a representation in the light of the judgement of the Supreme Court in State of Maharashtra (supra) which is squarely applicable to the facts of the present case and decide the issue within a reasonable period during the pendency of the petition.” (emphasis supplied)

4. Mr.Dave also relied upon a decision of the Hon'ble the Apex Court in the matter of **Chandigarh Administration and others Vs. Messrs Rajni Vali and others**, reported in A.I.R. 2000 SC 634, wherein the Hon'ble the Apex Court relied upon its aforesaid decision in the matter of **State of Maharashtra Vs. Manubhai Pragaji Vashi** (supra).

5. Mr.Dave, the learned advocate for the petitioners submitted that after order dated 23rd February 2001, the Government has communicated its decision to the petitioner by letter dated 25th July 2001, which is placed on record as Annexure 'G' to this petition. The authorities declined any relief to the petitioner-trust. This stand of the authorities is reiterated in the affidavit in reply filed by one Shri N.K. Patel, Under Secretary, Social Justice and Empowerment Department, affirmed on 21st December 2004. The authorities relied on a decision of this Court (R. Balia, J.) in Special Civil Application No.2915 of 1995 dated 28th April 1997 in

support of their decision.

6. The learned advocate Mr.Dave submitted that the judgement of the Hon'ble the Apex Court in the matter of **State of Maharashtra Vs. Manubhai Pragaji Vashi** (supra) is squarely applicable to the facts of the present case. He further submitted that in view of the aforesaid decision of the Hon'ble the Apex Court, the action of the Government to rely upon the decision of this Court any denial of reliefs sought for by the petitioner-trust is misplaced. The learned advocate submitted that out of the two decision the authorities ought to have relied upon the decision of the Hon'ble the Apex Court and not on the decision of the learned Single Judge of this Court. He submitted that despite there being a binding decision of the Hon'ble the Apex Court, the authorities have relied upon a decision of this Court and has thus, committed an error.

7. The learned advocate invited attention of this Court to the averments placed on record by an amendment, which was carried out after the Court order dated 29th August 2003. Para nos.7 and 6 are added along with prayer clause 8(AA). The learned advocate submitted that in the para added by way of amendment, the grounds were set out in detail for which the authorities ought to have applied the decision of the Hon'ble the Apex Court to the facts of the present case rather than the decision of this Court. The learned advocate vehemently submitted

that the deponent, who filed the affidavit in reply, affirmed on 21st December 2004 did not appreciate the true perspective of the matter. He submitted that besides, the authorities have also not paid sufficient heed to the observations made by this Court in order dated 23rd February 2001. He submitted that if the authorities were little vigilant, the error which has crept in could have been avoided. The learned advocate therefore, submitted that now in view of the decision of the Hon'ble the Apex Court, the petition be allowed and the reliefs, as prayed for be granted, in toto.

8. Assistant Government Pleader, Ms.Archana Raval vehemently tried to support the decision of the authorities and submitted that the authorities have followed the decision in Special Civil Application No.2915 of 1995 dated 28th April 1997, and declined the relief prayed for.

9. Having heard the learned advocates and having perused the judgement of the Hon'ble the Apex Court in the matter of **State of Maharashtra Vs. Manubhai Pragaji Vashi** (supra) and the decision of this Court in Special Civil Application No.2915 of 1995, this Court is of the opinion that the decision of the Hon'ble the Apex Court is squarely applicable to the facts of the present case and therefore, the petitioners are entitled to the reliefs as prayed for.

10. The distinguishing feature pointed out by the learned advocate on which the decision of the Hon'ble the Apex Court is applicable, also considered. In the case before the Hon'ble the Apex Court the facts were that the colleges run by private management and colleges run by the Government were treated differently. Same are the facts in the case before this Court. Here the Observation Homes run by public trust are treated differently than the one run by Government. Therefore, the decision of the Hon'ble the Apex Court will govern the field. It is also required to be noted that in the decision of this Court in Special Civil Application No.2915 of 1995, the institutions seeking parity were for two different sets of subjects. Though the institutions were engaged in social welfare activity, one set of institutions were engaged in welfare and upliftment of handicapped women and children and rendering assistance to the poor, destitute, needy widows, orphan women, girls and children, the other set of institutions were engaged in the field of social welfare of handicapped persons. That being so, this Court finds no reason why the relief as prayed for be denied to the petitioners.

11. Since the respondents have not disputed the fact of discharge of the same duties by the employees of the petitioner-public trust as that of the employees of observation homes/ remand homes run by the Government, the principle of equal pay for equal work will apply. Here, the term, 'pay' will include all

allowances also and not the mere pay scale. That being so, the employees of the petitioner-public trust shall be entitled to receive all the benefits which are received by the employees of the observation homes/ remand homes run by the Government.

12. In the result, this petition is allowed. The respondents are directed to give grant-in-aid to the petitioner-trust for the benefits like Medical Allowance, Leave Travel Concession, Uniform, Washing Allowance, Leave Encashment, Festival and Food Allowance and all other allowances as granted to the employees of observation homes/ remand homes run by the Government along with the benefits like bonus, pension, gratuity and other similar benefits which are granted to the employees of observation homes/ remand homes run by the Government. Order/ letter dated 17th February 1992 issued by the respondent authorities is hereby quashed and set aside. Rule is made absolute. No order as to costs.

(RAVI R. TRIPATHI, J.)

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